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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 247

WILLIAM T. REID, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 74–75) is reported at 136 F. (2d) 476. The opinion of the district court denying petitioner's motion for a new trial (R. 48–60) is reported at 49 F. Supp. 313.

JURISDICTION

The judgment of the circuit court of appeals was entered June 17, 1943 (R. 75), and a petition for rehearing was denied July 17, 1943 (R. 81). The petition for a writ of certiorari was filed August 9, 1943. The jurisdiction of this Court is

invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether, at petitioner's trial for making threats against the life of the President, it was error to admit evidence of subversive statements made by petitioner approximately one year after the date of the alleged offense.

2. Whether an oral threat against the life of the President, not communicated to him, constitutes an offense under 18 U. S. C. 89.

STATUTE INVOLVED

18 U. S. C. 89 (Act of February 14, 1917, c. 64, 39 Stat. 919) provides:

> Any person who knowingly and willfully deposits or causes to be deposited for conveyance in the mail or for delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, or who knowingly and willfully otherwise makes any such threat against the President, shall upon conviction be fined not exceeding $1,000 or imprisoned not exceeding five years, or both.

STATEMENT

Petitioner was indicted on December 8, 1942, in the District Court for the Western District of Louisiana, in one count charging a violation of 18 U. S. C. 89, *supra,* p. 2. The indictment alleged that on or about May 15, 1941, petitioner made threats to take the life of the President and against the life of the President "in the verbal use of certain threatening language, in that the defendant declared, in the presence and hearing of and to Ben Head and Mrs. Ben Head * * * that he hated President Roosevelt and that, if he had the time and money, he would go to Washington and kill the President and that if the President should ever come South, he most certainly would kill him, which threat was made against the President as such, and on account of his official character and capacity * * *." (R. 2–3.)

At the trial the Government offered three witnesses who testified, over petitioner's objection, concerning conversations they had had with petitioner in the spring and early summer of 1942, about a year subsequent to the date of the alleged offense, in which petitioner expressed sympathy for and desire to aid "the Germans," and stated that they were going to win the war (R. 15–16, 18), and that an army was needed "to guard [the President] because somebody was going to bump him off" (R. 18–19).[1]

[1] The Government's other evidence was not incorporated in the record on appeal.

In his charge the trial judge instructed the jury that the "crucial point" was whether petitioner had made the threat charged in the indictment; that if they concluded that he had, they might then consider evidence of the other statements made by petitioner, not as proving the commission of any other offense, but as bearing only on his intent or motive in making the threat charged (R. 25–26).

Petitioner was convicted (R. 3, 68) and sentenced to 18 months' imprisonment (R. 70–71). On appeal to the Circuit Court of Appeals for the Fifth Circuit, the conviction was affirmed (R. 74–75).

ARGUMENT

1. Petitioner contends (Pet. 4, 7–9) that the testimony concerning the statements made by him approximately one year after the commission of the alleged offense was erroneously admitted, because it constituted evidence of other offenses distinct from that charged in the indictment, and also because the statements were too remote in point of time to be probative on the issue of his intent in making the threat charged in the indictment.

This contention is without merit. The evidence was clearly admissible as bearing upon petitioner's intent, motive, and state of mind,[2] even

[2] See *Debs* v. *United States*, 249 U. S. 211, 214–215; *Williamson* v. *United States*, 207 U. S. 425, 451; *Allis* v. *United States*, 155 U. S. 117, 119; *Wood* v. *United States*, 16 Pet. 342.

if it disclosed the commission of other offenses. The rule that evidence of this character which throws light upon the intent of the accused is admissible, was peculiarly applicable here, for petitioner's defense was, in part, that the statement alleged in the indictment as constituting a threat against the life of the President, was not intended as a threat, but was uttered in a jocular vein or in the course of a political argument (R. 16–17). Petitioner's intent, therefore, was squarely placed in issue, and it was for this reason that the trial judge admitted the challenged evidence (*ibid.*). The limited purpose for which this evidence was admitted was, moreover, carefully explained to the jury; the judge instructed that it was to be considered only in connection with petitioner's intent in making the alleged threat (R. 25–26).

It is apparent that the evidence in question was material on the issue of petitioner's intent. His

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360–361; *Viereck* v. *United States*, 130 F. (2d) 945, 959–960 (App. D. C.), reversed on other grounds, 318 U. S. 236; *United States* v. *Pelley*, 132 F. (2d) 170, 180–181 (C. C. A. 7), certiorari denied, 318 U. S. 764, rehearing denied, 318 U. S. 801; *Schoborg* v. *United States*, 264 Fed. 1, 7 (C. C. A. 6), certiorari denied, 253 U. S. 494; *Howenstine* v. *United States*, 263 Fed. 1, 5–6 (C. C. A. 9); *Stenzel* v. *United States*, 261 Fed. 161, 162 (C. C. A. 8); *Shidler* v. *United States*, 257 Fed. 620, 623 (C. C. A. 9); *Herman* v. *United States*, 257 Fed. 601, 603–604 (C. C. A. 9), certiorari denied, 251 U. S. 558; *Coldwell* v. *United States*, 256 Fed. 805, 811–812 (C. C. A. 1), certiorari denied, 250 U. S. 661; *Kirchner* v. *United States*, 255 Fed. 301, 304–305 (C. C. A. 4), certiorari dismissed, 250 U. S. 678.

statements expressing sympathy with "the Germans" and a desire to aid their cause, and that an army was needed to guard the President because "somebody" was going to kill him, indicated a state of mind which would induce him maliciously to threaten the life of the President, and they were sufficiently connected in nature and circumstances to be probative on the issue of his intent at the time he made the threat.[3] Furthermore, the trial court has discretion in the admission of evidence which discloses intent (*Glasser* v. *United States,* 315 U. S. 60, 81–82; *Partridge* v. *United States,* 39 App. D. C. 571, 577), and a wide latitude is permitted where, as here, it is an important element of the offense charged.[4]

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[3] See, e. g., *United States* v. *Pelley*, 132 F. (2d) 170, 180–181 (C. C. A. 7), certiorari denied, 318 U. S. 764, rehearing denied, 318 U. S. 801; *Viereck* v. *United States*, 130 F. (2d) 945, 959–960 (App. D. C.), reversed on other grounds, 318 U. S. 236; *Grant* v. *United States*, 268 Fed. 443, 448 (C. C. A. 6), certiorari denied, 256 U. S. 700; *Howenstine* v. *United States*, 263 Fed. 1, 6 (C. C. A. 9). Since the evidence had probative value it is immaterial that the statements were made after, rather than before, the offense charged. *Allis* v. *United States*, 155 U. S. 117, 118; *Shreve* v. *United States*, 103 F. (2d) 796, 803 (C. C. A. 9), certiorari denied, 308 U. S. 570; *Holt* v. *United States*, 42 F. (2d) 103, 106 (C. C. A. 6).

[4] Petitioner's suggestion (Pet. 9) that the challenged evidence was inflammatory, is insubstantial. At the conclusion of his charge the trial judge admonished the jury that they were not to be swayed by the circumstance that our country is at war, and that they were required to give the case calm, honest, and dispassionate consideration (R. 26–27).

2. Petitioner also contends (Pet. 4, 9–11) that the statute does not embrace oral threats against the President, not communicated to him. He argues that, under the rule of *ejusdem generis,* the offense defined by the second part of the statute (p. 2, *supra*) is limited to acts similar to those set forth in the first part, i. e., to the sending of a letter or other instrument in writing "through interstate commerce, or other medium within Federal jurisdiction."

A mere reading of the statute demonstrates the fallacy of this contention. The term "otherwise" as used in the second part of the statute was obviously intended to cover the making of oral threats. The courts have so construed the statute. *United States* v. *Stobo,* 251 Fed. 689, 691 (D. Del.); *United States* v. *Metzdorf,* 252 Fed. 933, 937 (D. Mont.); see also *Clark* v. *United States,* 250 Fed. 449 (C. C. A. 5); *Ragansky* v. *United States,* 253 Fed. 643 (C. C. A. 7). In addition, the courts have repeatedly held that the threat need not be communicated to the President to come within the interdiction of the statute. *United States* v. *Stickrath,* 242 Fed. 151, 155–156 (S. D. Ohio); *United States* v. *Jasick,* 252 Fed. 931, 933 (E. D. Mich.); *United States* v. *Stobo, supra,* at 691–692. This construction of the statute as covering oral threats not communicated to the President, is supported as well by the expla-

nation of its scope given on the floor of the House by the sponsor of the bill.[5]

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[5] Congressman Webb, who was in charge of the bill, stated (53 Cong. Rec. 9377–9378):

"This bill was drawn by the Department of Justice, and the committee went over it carefully and amended it, and struck out the punishment for threats, *either orally* or by mail, against the successors to the President, and made it apply to the President alone. I can say to my friend that for 25 years threatening letters have come in the White House mail, and something ought to be done in the way of protecting the Chief Executive of this great Republic, if possible, from this kind of annoyance. [Italics supplied.]

* * * * *

"A bad man can make a public threat, and put somebody else up to committing a crime against the Chief Executive, and that is where the harm comes. The man who makes the threat is not himself very dangerous, but he is liable to put devilment in the mind of some poor fellow who does try to harm him. * * *

"* * * The highest duty of a Government is to protect itself, and certainly the head of the Government should be protected both against assault and against any threat to do him physical harm * * *.

"* * * That is one reason why we want this statute—in order to decrease the possibility of actual assault by punishing threats to commit an assault * * *.

"* * * everybody admits that the Chief Executive of a great Nation like ours ought to be protected in every way possible, especially in view of the sad experience we have had in losing by assassination three of our beloved Presidents. * * *

"* * * an ounce of prevention is worth a pound of cure, and we want to prevent the threats which often incite men to kill and murder."

CONCLUSION

The decision below is correct, and there is involved no conflict of decisions or question of general importance. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

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